COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers	D.T.E. 03-60

AT&T'S OPPOSITION TO VERIZON'S MOTION TO STAY TRACK B

Introduction

In an after-thought, Verizon filed on March 10 a letter adding to its motion to stay Track A a further request that Track B be stayed as well, except for investigation of the WPTS hot cut process. In its letter, Verizon asks that the Department limit Verizon's obligation to streamline and make more economical the processes by which CLECs obtain access to unbundled loops. Verizon wants to limit that obligation to only the WPTS process. Verizon does not contend that the Department does not have jurisdiction to considered improved rates, terms and conditions for access to unbundled loops under either state or federal law. Indeed, Verizon concedes that it remains subject to the obligation imposed by the Department's order in D.T.E. 01-20 to provide more efficient and streamlined processes for CLECs to obtain access to in-service loops. For the reasons discussed below, the Department should continue its investigation into the rates, terms and conditions of a more efficient, streamlined and cost-effective process for accessing unbundled loops based on the economies of scale achievable in a high volume, large job

process and based on improved operational systems and software that Verizon is implementing elsewhere.

Argument

A. THE DEPARTMENT HAS JURISDICTION UNDER BOTH FEDERAL AND STATE LAW TO REQUIRE IMPROVED HOT CUT PROCESSES FOR ACCESSING UNBUNDLED LOOPS.

The Department has unquestioned authority under both state and federal law to require Verizon to provide non-discriminatory, just and reasonable access to unbundled loops. There is no dispute that under federal law, Verizon is subject to an unbundling requirement for mass market loops, with exceptions related to certain loops not relevant hereto.[1] There is, equally, no dispute that the Department has authority to implement the federal requirement that mass market loops be unbundled. As the FCC noted in its TRO, "even the incumbent LECs agreed that the loop network element must be unbundled pursuant to sections 251(c)(3) and 251(d)(2) of the Act."[2] Access to such loops includes the rates, terms and conditions upon which such access is made available. Such rates, terms and conditions necessarily involve the hot cut process and its rates.

B. THE DEPARTMENT'S DECISION IN D.T.E. 01-20 REQUIRES CONTINUED INVESTIGATION OF ANY AND ALL HOT CUT PROCESSES, INCLUDING VERIZON'S PROPOSED LARGE JOB PROCESS, THAT POTENTIALLY MEETS THE REQUIREMENTS OF D.T.E. 01-20.

As noted at the outset, Verizon concedes that the Department has jurisdiction to consider rates, terms and conditions of loop access by acknowledging its obligation to comply with the Department's directive in D.T.E. 01-20 to offer CLECs a less costly alternative to the hot cut process. [3] Verizon, however, mistakenly believes that its

---

1 47 C.F.R. 51.319; Triennial Review Order ("TRO"), at ¶¶ 199, 211.
2 TRO, at ¶ 203.
3 D.T.E. 01-20 (July 11, 2002), at 499-500.

obligation under the Department's directive in D.T.E. 01-20 is limited to offering the WPTS process. Verizon's belief that it does not need to offer more is hard to fathom. Verizon's WPTS software, far from being new and improved, is four year old technology. Verizon has already made available or is working to make available other less costly and more efficient processes in other jurisdictions. These not only include its Large Job process, but actual improvements to WPTS that Verizon may offer to certain CLECs under private agreement in Massachusetts itself. Verizon has no basis whatsoever for refusing to offer these new procedures, software and process improvements in Massachusetts, or for refusing to adjust its hot cut rates to reflect these new efficiencies.

As it notes in D.T.E. 01-20, the Department's intent is to obtain "an alternative hot cut process that "would permit CLECs: (1) to minimize service disruption to customers; (2) to reduce or eliminate the need for manual process; (3) to eliminate the need for communications required during the actual cutover; and (4) to purchase a less costly alternative." [4] Indeed, the Department made clear that it did not intend to lock Verizon into any specific type of process as long as the process met the Department's objectives. [5] And, in fact, Verizon asked for and obtained the right to file a different process, provided it met the Department's objectives.[6] Compliance with the Department's objective of a simplified, seamless and low cost process for hot cuts is not, therefore, confined to the WPTS process to which Verizon now seeks to limit this proceeding.

---

4 D.T.E. 01-20 Letter Order (Feb. 12, 2003), at 2.
5 *Id.*
6 *Id.*

Indeed, when Verizon filed its hot cut offerings in this docket, it did not limit itself to a proposed WPTS process pursuant to the Department's 01-20 directive and a proposed "batch" process pursuant to the FCC's TRO directive. In fact, Verizon filed a "Large Job" process as well. Verizon's proposed Large Job process, as a proposal and subject to change after hearings and briefing, is in line with the Department's directive to Verizon in D.T.E. 01-20 to implement a streamlined, low cost process as an alternative to the existing hot cut process. To the extent that this process better meets the Department's objectives in D.T.E. 01-20, Verizon's failure to continue to seek Department approval of it, as amended in accordance with Department findings, would constitute a failure to comply with the Department's directives. It would also constitute a severe blow to AT&T and many other CLECs who rely on its process in New York and prefer it over Verizon's flawed batch hot cut proposal.

It is no consolation to the CLECs which rely on the Large Job process that Verizon has voluntarily made it available in Massachusetts in certain circumstances. First, unless it is required by the Department, Verizon can withdraw its availability according to its own needs. Second, Verizon is under no obligation to reflect cost savings in the rate for the Large Job process and, indeed, has chosen to charge the basic, individual, hot cut rate for loops cutover pursuant to the Large Job process when offered in Massachusetts . Third, if the Department does not continue reviewing the Large Job process in this docket, there is no forum for achieving the implementation of improvements to this process.

The Department, moreover, has a strong interest in ensuring that CLECs have access to unbundled loops on the basis of the most efficient and lowest cost process

available. Facilities based local competition will occur only if customers can migrate between facilities-based carriers seamlessly and only if the cost of such migration is not prohibitively high. A low cost and seamless process is necessary to protect and ensure the competition that the Department has nurtured in Massachusetts for many years. It would be arbitrary to refuse to investigate the potential efficiency gains from the Large Job process and any other desirable processes that evolve in this proceeding. Those benefits will inure to competition and Massachusetts consumers regardless of what happens with respect to *United Stated Telecom Association v. FCC*, No. 00-1012 (March 2, 2004) ("*USTA II*").

C. GIVEN THE EXISTING STAY OF USTA II'S VACATEUR AND THE STRONG POSSIBILITY THAT IT WILL CONTINUE, A FURTHER STAY OF TRACK B WOULD COMPROMISE THE ABILITY OF THE DEPARTMENT TO COMPLETE ITS INVESTIGATION WITHIN THE NINE MONTHS PRESCRIBED BY THE TRO.

Compliance with the Department directives in D.T.E. 01-20, although sufficient, is not the only reason to continue Track B. It should also continue pursuant to the FCC's directive in the TRO. As AT&T noted in its March 5 opposition to Verizon's motion to stay, Verizon is currently under an obligation to propose a batch hot cut process in compliance with TRO requirements. Only if the *USTA II* Court's order is not stayed further will that obligation be removed, and even then, it will likely only be delayed.. Nothing in USTA II even hints at Court objection to FCC or state imposed requirements on ILECs to provide efficient and cost effective hot cut processes. Currently, therefore, we must continue. More importantly, we cannot afford not to. If, as AT&T and many others believe, the *USTA II* Court's order will be stayed further, the Department and the parties will have lost valuable time needed to reach the required decisions within the

nine-month time period imposed by the TRO. It would be irresponsible to stop now, when we still face the strong likelihood that we will need to meet the TRO's nine month deadline.

Finally, it should be noted that *USTA II* did not find objectionable the basic notion that the cost and operational difficulties associated with hot cuts give rise to impairment in the absence of access to unbundled switching and UNE-P. Rather, the Court was concerned that without the safety valve of a state considering the possibility that local hot cut rates and processes do not constitute impairment given local conditions (a safety valve that the *USTA II* Court disabled), a hot cut based impairment standard could not be sustained on a nationwide basis. The Court preferred that a more granular analysis be developed to analyze the ability of ILECs to meet specific hot cut performance criteria in specific local areas. Since that is the type of analysis in which the states are engaging Under the TRO, the *USTA II* Court is apparently satisfied with the FCC's reliance on hot cuts as a basis for impairment/non-impairment determinations, provided that it is applied to local markets using specific criteria and that the states do not make the final decision. In short, nothing in the D.C. Circuit Court's decision, even if it were to stand, indicates that there will not be a need to address impairment issues created by the hot cut process.

Conclusion

Facilities based competition in the mass market will not occur in this state, or anywhere else, unless efficient, streamlined, low-cost hot cut processes are in place. Verizon seeks a delay in implementation of such processes for that very reason. Public policy dictates and the law requires CLEC access to unbundled loops on reasonable terms and conditions, at rates reflecting all possible efficiencies, and with performance

characteristics that maintain continuity of service to Massachusetts consumers. The quickest and surest way to achieve these objectives is to continue Track B of this docket and deny Verizon's motion to stay it.

Respectfully submitted,

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.
By its attorneys,

_____

Jeffrey F. Jones
Kenneth W. Salinger
Laurie Gill
Ruth Dowling
John Bennett
Michael Rabieh
PALMER & DODGE LLP
111 Huntington Avenue
Boston, MA 02199
617.239.0561
ksalinger@palmerdodge.com

Jay E. Gruber
Harry M. Davidow
AT&T Communications
of New England, Inc.
99 Bedford Street, 4th Floor
Boston, MA 02111
617.574.3149
jegruber@lga.att.com

March 12, 2004